

**PERLA PALMA GIL, VICENTE HIZON, JR., AND ANGEL PALMA GIL,
PETITIONERS, VS. HON. COURT OF APPEALS, HEIRS OF EMILIO
MATULAC, CONSTANCIO MAGLANA, AGAPITO PACETES & THE
REGISTER OF ...**

G.R. No. 127206. September 12, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

For review on appeal by certiorari are the Decision[1] of the Court of Appeals in CA-G.R. CV. No. 43188 promulgated on March 19, 1996, and its Resolution[2] dated October 17, 1996, denying the petitioners' Motion for Reconsideration of the said decision.

The appealed decision affirmed in toto the judgment of the Regional Trial Court, Davao City, Branch 16, in Civil Case No. 15,356 which dismissed the complaint of the herein petitioners.

The Antecedents

Concepcion Palma Gil, and her sister, Nieves Palma Gil, married to Angel Villarica, were the co-owners of a parcel of commercial land with an area of 829 square meters, identified as Lot No. 59-C, covered by Transfer Certificate of Title (TCT) No. 432 located in Davao City. The spouses Angel and Nieves Villarica had constructed a two-storey commercial building on the property. On October 13, 1953, Concepcion filed a complaint against her sister Nieves with the then Court of First Instance of Davao City, docketed as Civil Case No. 1160 for specific performance, to compel the defendant to cede and deliver to her an undivided portion of the said property with an area of 256.2 square meters. After due proceedings, the court rendered judgment on April 7, 1954 in favor of Concepcion, ordering the defendant to deliver to the plaintiff an undivided portion of the said property with an area of 256.2 square meters:

A la vista de los datos expuestos, el Juzgado dicta sentencia condenando a la demanda, Nieves Palma Gil de Villarica, cumpla con los terminos del documento (Exh. "A") ordenando a aquella que otogue los documentos necesarios traspasando a favor de la demandante (CONCEPCION PALMA GIL), 256 metros cuadrados con 20 centimetros" del Lote No. 56-C descrito mas particularmente en el Certificado de Titulo No. 432.[3]

Nieves appealed to the Court of Appeals which affirmed the assailed decision. In due course, the decision became final and executory. On motion of the plaintiff (Concepcion), the court issued a writ of execution. Nieves, however, refused to execute the requisite deed in favor of her sister. On April 27, 1956, the court issued an order authorizing ex-officio Sheriff Eriberto Unson to execute the requisite deed of transfer to the plaintiff over an undivided portion of the property with a total area of 256.2 square meters. Instead of doing so, the sheriff had the property subdivided into four lots namely, Lot 59-C-1, with an area of 218 square meters; Lot 59-C-2, with an area of 38 square meters; Lot 59-C-3, with an area of 14 square meters; and Lot 59-C-4, with an area of 560 square meters, all covered by a subdivision plan. The sheriff thereafter executed a Deed of Transfer to Concepcion over Lot 59-C-1 and Lot 59-C-2 with a total area of 256.2 square meters.

On October 24, 1956, Concepcion executed a deed of absolute sale over Lot 59-C-1 in favor of Iluminada Pacetes. In the said deed, the area of Lot 59-C-1 appeared as "256 square meters" although under the subdivision plan, the area of the property was only 218 square meters. The vendee obliged herself to pay the said amount, to wit:

- The purchase price of P21,600.00 shall be paid as follows: P7,500.00 to be paid upon the signing of this instrument; and the balance of P14,100.00 to be paid upon the delivery of the corresponding Certificate of Title in the name of the VENDEE.[4]

Under the deed of absolute sale, the parties further agreed as follows:

- That the VENDOR shall, within the period of ONE HUNDRED TWENTY (120) DAYS, from the signing of this agreement, undertake and work for the issuance of the corresponding Certificate of Title of the said Lot No. 59-C-1 in her favor with the proper government office or offices, to the end that the same can be duly transferred in the name of the herein VENDEE, by virtue thereof.
- That pending the full and complete payment of the purchase price to the VENDOR, the VENDEE shall collect and receive any and all rentals and such other income from the land above-described for her own account and benefit, this right of the VENDEE to begin from December 1, 1956.[5]

In the meantime, Nieves filed a motion in Civil Case No. 1160 to compel the sheriff to report on his compliance with the court's Order dated April 27, 1956. The motion was denied. A motion for reconsideration of the denial met the same fate. Nieves appealed to the Court of Appeals, which appeal was docketed as CA-G.R. No. 22438-R.

In a parallel development, Concepcion filed a complaint for unlawful detainer against the spouses Angel and Nieves Villarica with the Municipal Trial Court docketed as Civil Case No. 2246. On October 4, 1956, the court rendered judgment in favor of the plaintiff and against the defendants, the decretal portion of which reads as follows:

From the foregoing, it is indeed evident and clear that the herein defendants have been unlawfully withholding possession of the land from the plaintiff, and hereby finds in favor of the plaintiff, and against the defendants, ordering the latter to vacate the premises described in the complaint, removing whatever improvements they have constructed thereon. The defendants are further judged to pay the plaintiff the amount of ONE HUNDRED FIFTY PESOS (P150.00) a month from the time of the filing of this complaint until the lot is finally vacated in concept of rentals, deprived of the plaintiff due to the unlawful possession of the defendants, and to pay the costs of this suit.[6]

The decision became final and executory but the plaintiff did not file any motion for a writ of execution.

The spouses Angel and Nieves Villarica filed a complaint on October 24, 1956 against the sheriff and Concepcion with the Court of First Instance of Davao City, docketed as Civil Case No. 2151 for the nullification of the deed of transfer executed by the sheriff.[7]

On December 21, 1956, Iluminada Pacetes filed a motion to intervene in Civil Case No. 2151, as vendee of the property subject of the case, which was granted by the court. She then filed a motion to dismiss the complaint. The court granted the motion. Nieves appealed to the Court of Appeals which appeal was docketed as CA-G.R. No. 22008-R. Nieves' appeals in Civil Cases Nos. 1160 and 2151 were certified by the CA to this Court, docketed as G.R. No. L-15799 and G.R. No. L-15801.

On the basis of the deed of transfer executed by Sheriff Iriberto A. Unson, the Register of Deeds issued TCT No. 7450 over Lot 59-C-1 and 59-C-2 on July 17, 1957 in the name of Concepcion, with a total area of 256.2 square

meters. However, the latter failed to transfer title to the property to and under the name of Iluminada Pacetes. Consequently, the latter did not remit the balance of the purchase price of the property to Concepcion.

In the interim, the spouses Angel and Nieves Villarica executed a real estate mortgage over Lot 59-C-4 in favor of Prudential Bank as security for a loan. On August 4, 1959, Concepcion died intestate and was survived by Nieves Villarica and her nephews and nieces. Iluminada filed a motion in Civil Case No. 1160 for her substitution as party-plaintiff in lieu of the deceased Concepcion. On August 2, 1961, the court issued an order granting the motion.

On August 31, 1961, this Court rendered judgment in G.R. Nos. L-15799 and L-15801 setting aside the deed of transfer executed by the sheriff in favor of Concepcion Palma Gil, and remanding the records to the trial court for further proceedings.[8] In compliance with the Decision of this Court in G.R. No. L-15801, the trial court conducted further proceedings in Civil Case No. 1160 and discovered that the defendant had mortgaged Lot 59-C-4 to the Prudential Bank. Consequently, the court issued an order on February 17, 1964, declaring that the defendant had waived the benefits of the Decision of the Court on August 31, 1961 in G.R. No. L-15801; thus, the conveyance of the property made by Concepcion in favor of Iluminada on October 24, 1956 must stand. Nieves filed a motion for the reconsideration of the said order but the court denied the same in an Order dated February 29, 1964. Nieves appealed the order to the CA which dismissed the appeal for her failure to file a record on appeal. Nieves filed a petition for review with this Court docketed as G.R. No. L-28363.

More than five years having elapsed without the decision in Civil Case No. 2246 being enforced, Iluminada filed a complaint docketed as Civil Case No. 4413 in the Court of First Instance of Davao City, for the revival and execution of the decision of the Municipal Trial Court in Civil Case No. 2246 (the unlawful detainer case). The plaintiff therein averred that, as Concepcion's successor-in-interest, she acquired the right of action to enforce the decision in Civil Case No. 2246. The defendants, on the other hand, averred that Iluminada had not yet paid the balance of the purchase price of Lot 59-C-1; hence, she had not acquired title over the lot and the right to evict the defendant. The deed of absolute sale executed by Concepcion in favor of the plaintiff was an executory, not an executed deed. On January 26, 1965, the court rendered judgment in favor of the defendants and dismissed the complaint. The decretal portion reads:

IN VIEW OF THE FOREGOING, the Court believes that the plaintiff herein has not been properly and legally subrogated to the rights and action of deceased Concepcion Palma Gil and, hence, for these reasons the Court dismisses this case without pronouncement as to costs.

The counterclaim is also hereby ordered dismissed.[9]

On March 16, 1966, Iluminada Pacetes and Agapito Pacetes executed a deed of absolute sale over Lot 59-C-1 and Lot 59-C-2 in favor of Constancio B. Maglana for P110,000.00, covered by TCT No. 7450.[10] The spouses-vendors undertook to secure title over the lots under the name of the vendee within ninety days.

On May 15, 1974, this Court denied the petition for certiorari filed by Nieves in G.R. No. L-28363.[11] The Court, in part, ruled:

But while the issue at bar exclusively involves the timeliness of the appeal of the petitioners to the Court of Appeals, this Court has nonetheless examined and analyzed the substantive aspects of this case and is satisfied that the ORDERS of the trial court complained of are morally just.

Accordingly, the instant appeal is dismissed and the resolution of the Court of Appeals dated July 31, 1967 and its resolution dated October 18, 1967 are affirmed.[12]

The decision of the Court became final and executory.

On May 5, 1975, the spouses Agapito and Iluminada Pacetes filed a complaint against Nieves in the Court of First Instance of Davao City, docketed as Civil Case No. 8836 for the recovery of possession of Lot 59-C-1 and Lot 59-C-2. The Pacetes spouses claimed that Lot 59-C-2 was included in TCT No. 7450 under the name of Concepcion. The spouses prayed that judgment be rendered in their favor after due proceedings thus:

PRAYER

PREMISES CONSIDERED, it is most respectfully prayed that:

- During the pendency of this case, Defendant be ordered:
- To refrain from collecting rentals from the tenants or occupants of the building erected in said Lot 59-C-1; in that the tenants be directed to pay their rental to the plaintiff;
- To demolish her aforesaid building of strong materials and vacate the premises of Lot 59-C-1 and Lot 59-C-2.
- After hearing, Defendant be ordered to:
- Pay the Plaintiffs the amount consisting of compensation for the use of the land they have been deprived (sic) of to receive and enjoy since October 24, 1956 due to the unwarranted and illegal occupation of the said lots by defendant;
- Pay Plaintiffs moral and exemplary damages in such amount as the Honorable Court may fix considering the facts and the law;
- Pay Plaintiffs such expenses of litigation as may be proven during the trial, and
- Pay Plaintiffs expenses for services of counsel they had to incur (sic) in this complaint.
- OTHER RELIEFS consonant with justice and equity are prayed for.[13]

On May 10, 1977, Nieves Villarica executed a lease agreement with Virginia Jorge and Anita Vergara over Lots 59-C-1 and 59-C-2. The lessees took actual possession of the leased property.

In their Answer to the complaint in Civil Case No. 8836, the defendants averred, by way of defense, that the complaint was barred by the decision of the CFI in Civil Case No. 4413, which ruled that the Deed of Absolute Sale executed by Concepcion in favor of Iluminada was merely an executory, but not an executed contract. After the plaintiffs had rested their case, the defendants filed a motion to dismiss (demurrer to evidence). On October 29, 1975, the court issued an order dismissing the complaint on the ground that the action was barred by the decision of the court in Civil Case No. 4413.[14] Thus, Virginia Jorge and Anita Vergara continued to be in physical possession of the property.

In the meantime, on August 8, 1977, Iluminada consigned with the court in Civil Case No. 1160 the amount of P11,983.00 only as payment of the purchase price of the property. Iluminada was issued receipts for the amount.[15] As successor-in-interest of Concepcion, she likewise filed a motion for execution in Civil Case No. 1160 for the eviction of the defendant Nieves Villarica and all those acting for and in her behalf. The court issued an order on August 19, 1977 granting the motion. The defendants filed a motion for reconsideration of the order claiming that Iluminada was not a party to the case which the court denied on September 2, 1977. The defendant filed another motion for reconsideration which was likewise denied on September 16, 1977. The defendant filed a petition for certiorari with the Court of Appeals docketed as CA-G.R. No. 62957-R, which petition was dismissed on August 26, 1980. The CA ruled that Iluminada Pacetes was the real party-in-interest as the vendee of the property. The defendant filed a petition with this Court docketed as G.R. No. L-56399.

In the meantime, Iluminada filed a petition with the RTC docketed as Miscellaneous Case No. 4715 for the issuance of an owner's duplicate of TCT No. 7450. On March 22, 1978, the court granted the petition and ordered the Register of Deeds to issue an owner's duplicate of the said title under the name of Concepcion Gil. Iluminada presented the said order and the deed of absolute sale executed by Concepcion in her favor. On May 9, 1978, the Register of Deeds issued TCT No. 61514 over Lot 59-C-1, with an area of 218 square meters, in the name of Iluminada Pacetes.[16]

On April 21, 1980, TCT No. 73412 was issued by the Register of Deeds of Davao City in favor of Constancio Maglana over Lot 59-C-1 only.[17] The next day, Constancio Maglana executed a deed of sale not only over Lot 59-C-1 but also Lot 59-C-2, in favor of Emilio Matulac for the purchase price of P150,000.00.[18] On the basis of the said deed, the Register of Deeds issued TCT No. 80631 to and under the name of Emilio Matulac over the two lots.

In the meantime, Angel Villarica had died on April 20, 1974. On July 7, 1981, his heirs, including his widow Nieves, executed an Extra-Judicial Settlement of Estate of Deceased in which the latter waived, ceded and transferred to her children Teresita Magpantay, Antero P.G. Villarica, Zenaida V. Alovera, Emperatriz V. Garcia, Napoleon P.G. Villarica and Rupendo P.G. Villarica her rights and interests over the property covered by TCT No. 7450.[19]

On January 13, 1982, this Court affirmed the resolution of the Court of Appeals, in CA-G.R. No. 62975-R and dismissed the petition for certiorari in G.R. No. L-56399, thus, paving the way for the execution of the decision of the trial court in Civil Case No. 1160, per its Order dated August 19, 1977. Emilio Matulac filed a motion for the issuance of a writ of execution. The Court granted the motion on February 18, 1982. Nieves filed a motion for the reconsideration of the order which the court denied in its Order dated March 17, 1982. Virginia Jorge and Anita Vergara, the lessees, filed a motion for reconsideration but the court denied the motion. Nonetheless, the lessees were allowed to stay in the property until April 9, 1982. However, the lessees refused to vacate the property after said date.

On April 10, 1982, Emilio Matulac filed a motion in Civil Case No. 1160 for the issuance of a writ of execution and an order of demolition. On April 20, 1982, the trial court issued an order granting the motion for a writ of execution on April 30, 1982. The court also issued a special order for the demolition of the buildings on the property. The buildings on the property, including the properties owned by Virginia Jorge and Anita Vergara, were demolished on June 14, 1982. Emilio Matulac thereafter commenced the construction of a building thereon. The defendant Nieves Villarica, in the meantime, filed a motion in Civil Case No. 1160 to annul the proceedings, including the writ of execution issued by the court, and the issuance of a restraining order.

For their part, Virginia Jorge and Anita Vergara filed a petition for certiorari with this Court docketed as G.R. No. L-60690 for the nullification of the aforesaid orders and the writ of demolition issued by the trial court in Civil Case No. 1160.

Three of the surviving heirs of Concepcion Gil, namely, Perla Palma Gil, Vicente Hizon, Jr. and Angel Palma Gil, through their first cousin, Atty. Vicente Villarica, one of Nieves Villarica's children, filed on June 17, 1982, a complaint against Emilio Matulac, Constancio Maglana, Agapito Pacetes, and the Register of Deeds, with the Court of First Instance, docketed as Civil Case No. 15,356 for the cancellation of the deed of sale executed by Concepcion in favor of Iluminada Pacetes; the deed of sale executed by the latter in favor of Constancio Maglana; the deed of sale executed by the latter in favor of Emilio Matulac, as well as TCT Nos. 61514, 73412 and 80631 under the respective names of the vendees.

The plaintiffs alleged, inter alia, that the deed of absolute sale executed by Concepcion in favor of Iluminada over

Lots 59-C-1 and 59-C-2 was a contract to sell, an executory contract, as declared by the Court of First Instance in Civil Cases Nos. 4413 and 8836, and not an executed contract; the defendant spouses Agapito and Iluminada Pacetes failed to pay the balance of the purchase price of the property during the lifetime of Concepcion; hence, what was embodied in the said deed was not fulfilled by the vendee. Consequently, the sale is null and void.

The plaintiffs prayed for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin the defendant Emilio Matulac from continuing with the construction of a building on the property. The plaintiffs likewise prayed that after due proceedings, judgment be rendered in their favor and against the defendants, thus:

WHEREFORE, in view of the aforecited reasons it is most respectfully prayed that:

1) An order be rendered immediately enjoining defendant Matulac from doing further work in the construction of the building and enjoining him from entering the premises and the land subject of this complaint and after trial making the injunction above-mentioned permanent, ordering the removal of any structure and other construction within the plaintiffs' above-described property and thereafter, upon said defendant's failure to do so authorizing plaintiffs to order said removal at defendant's expense.

2) Judgment be rendered ordering:

- Defendant Register of Deeds to cancel TCT No. T-61514, T-73412 and T-80631 and issued (sic) a new Transfer Certificate of Title in the name of the above-mentioned heirs of the late Concepcion Palma Gil nullifying the deeds of sale, Annexes "B," "C," and "D" hereof;

- Defendants Pacetes, Maglana and Matulac jointly and solidarily liable to plaintiffs for moral and exemplary damages as may be granted by this Honorable Court and the amount of P25,000.00 as attorney's fees; and

- Litigation expenses and other reliefs as may be justified under this case.[20]

In his answer to the complaint, defendant Emilio Matulac interposed the following special and affirmative defenses: (a) he is the lawful owner of the property; (b) the action is barred by the Decision of this Court in G.R. No. L-56399; (c) the plaintiffs are estopped from assailing the sale to him of the property; and (d) he is a purchaser in good faith.

On November 29, 1982, the court issued an order in Civil Case No. 1160, denying the motion for the nullification of the proceedings and for a writ of preliminary injunction. Nieves filed a motion for reconsideration of the order. On February 18, 1983, the court issued an order denying the motion. Nieves filed a petition with the Court of Appeals for the nullification of the same.

In the meantime, Emilio Matulac died intestate and was substituted by his heirs Sonia Matulac, Josephine Matulac and Gregorio Matulac.[21] A petition was filed with the RTC of Davao City for the settlement of his estate docketed as SP-No. 2747. The Court appointed Sonia Matulac as administratrix of the estate.

The CA rendered a decision granting the petition and ordering the trial court to conduct further proceedings to implement the August 19, 1977 Order. Sonia Matulac filed a petition for review on certiorari with this Court docketed as G.R. No. 85538 for the nullification of the decision of the CA.

On November 24, 1989, this Court rendered a Decision dismissing the petition in G.R. No. L-60690. This Court said:

When We dismissed on September 16, 1974, the petition for certiorari filed by defendants questioning the orders, dated December 7, 1961 and December 17, 1964, in effect We had confirmed the sale by plaintiff in Civil case No. 1160, Concepcion Palma Gil, of Lot 59-C-1 and 59-C-2 to Iluminada Pacetes and affirmed the ruling of the trial court that defendants had waived the benefit of Our Resolution rendered on August 31,

1961.[22]

Meanwhile, one of the plaintiffs, Perla Palma Gil in Civil Case No. 15,356, was appointed by the court as administratrix of the estate of Concepcion on December 29, 1989,[23] and filed in the said case a motion to intervene as plaintiff in her capacity as administratrix in behalf of all the heirs of Concepcion.[24] The heirs of Emilio Matulac opposed the motion considering that they, and not the estate of Concepcion, owned the subject property; thus the claim of the plaintiff should be filed in SP-No. 2747. On April 7, 1990, the said motion was denied by the trial court.[25] The said court declared:

Being already a plaintiff together with the other plaintiffs in this (sic) case, said intervention by plaintiff Perla Palma Gil is not absolutely necessary and imperative. It would only delay the early disposition of the case if allowed.

On January 8, 1990, this Court dismissed the petition in G.R. No. 85538. The petitioners filed a motion for reconsideration and on July 2, 1992, this Court granted the motion and reversed the decision of the CA. This Court ruled in the said case as follows:

When Concepcion Palma Gil, plaintiff in Civil Case No. 1160 sold the land in question to Iluminada Pacetes on October 24, 1956, the latter became the new owner of the property. By virtue of the order of substitution issued by the court, said new owner (Pacetes) became a formal party---the party plaintiff. As the new party plaintiff, Pacetes had the right to move for the issuance of a writ of execution, which was correctly granted by the trial court in the questioned Order dated August 19, 1977.

The subsequent transfers of the property from Pacetes to Maglana, and then from Maglana to herein movant Matulac, was acquired pendente lite. The latter (Matulac) as the latest owner of the property, was, as aptly put by the trial court, subrogated to all the rights and obligations of Pacetes. He is thus the party who now has a substantial interest in the property. Matulac is a real party-in-interest subrogated to all the rights of Iluminada Pacetes, including the right to the issuance of a writ of execution in his name. Hence, the questioned orders of the lower court dated November 29, 1982 and February 18, 1983 as well as the Writ of Possession issued pursuant to the aforementioned orders are valid. They do not in any way run counter to the order of the lower court dated August 19, 1977, which granted the motion for execution filed by Pacetes, who, as earlier pointed out, was succeeded in all his rights and interests, by herein petitioner, Matulac.

Although the dispositive portion of the judgment rendered in Civil Case No. 1160 did not award the parties their respective shares in the property, the power of the court to issue the order of execution cannot be limited to what is stated in the dispositive portion of the judgment. As held in *Paylago vs. Nicolas* (189 SCRA 728 [1990]), the body of the decision must be consulted in case of ambiguity in the dispositive portion. Hence, in *Jorge vs. Consolacion* (supra), we ruled that the execution of the judgment cannot be limited to its dispositive portion, considering the continued failure of the defendant Nieves Palma Gil-Villarica, to comply with what was required of her in the judgment. Respondents deprived petitioner Concepcion Palma Gil and her successors-in-interest of their legal right to possess the land.[26] (Underscoring supplied)

On June 11, 1993, the trial court rendered judgment in Civil Case No. 15,356 in favor of the defendants. The trial court ruled that this Court had affirmed, in G.R. No. 85538 and G.R. No. L-60690, the sales of the property from Concepcion Palma Gil to Iluminada Pacetes, then to Constancio Maglana and to Emilio Matulac; hence, the trial court was barred by the rulings of this Court. The plaintiffs appealed to the CA with the following assignment of errors:

- The trial court erred in not holding that Iluminada Pacetes had no right to sell or transfer the two (2) parcels of land to Constancio Maglana;
- That the trial court erred in not declaring the sale of the properties in question from Iluminada Pacetes to

Constancio Maglana, thence, from Constancio Maglana to Emilio Matulac NULL and VOID;

- That the trial court erred in dismissing the complaint;
- That the trial court erred in not ordering the cancellation of transfer Certificate of Title No. T-80631 in the name of Emilio Matulac and the issuance of a new title in the name of Concepcion Palma Gil;
- That the trial court erred in not holding the appellees liable for damages to the appellants.[27]

In the meantime, on June 29, 1994, the estate of Emilio Matulac executed a deed of sale of real estate in which the estate sold Lots 59-C-1 and 59-C-2 and the building thereon to the Prudential Education Plan, Inc. for P7,000,000.00.[28] On March 19, 1996, the CA rendered a decision affirming the decision assailed therein and dismissing the appeal. The CA ruled that the deed of absolute sale executed by Concepcion in favor of Iluminada Pacetes was a deed of absolute sale over Lots 59-C-1 and 59-C-2, under which the ownership over the property subject thereof was transferred to the vendee. Moreover, the validity of the sales of the subject lots by Concepcion to Iluminada, by the latter to Constancio Maglana, and by the latter to Emilio Matulac, had been confirmed by this Court in G.R. No. L-60690 and G.R. No. 85538. Although Iluminada paid the balance of the purchase price of the property only on August 8, 1977, the payment was still timely, in light of Article 1592 of the New Civil Code. Besides, the property had already been sold to the respondents Constancio Maglana and Emilio Matulac.

The appellants, now petitioners in this case, assert that private respondents Agapito and Iluminada Pacetes failed to pay the balance of the purchase price in the amount of P14,100.00. They did consign and deposit the amount of P11,983.00, but only on August 8, 1977, twenty one years from the execution of the Deed of Absolute Sale in favor of the said spouses, without the latter instituting an action for the cancellation of their obligation. According to the petitioners, the consignment made by Iluminada Pacetes of the amount did not produce any legal effect. Furthermore, private respondents Constancio Maglana and Emilio Matulac were not purchasers in good faith because at the time they purchased the respective properties, the two-storey building constructed by the spouses Angel and Nieves Villarica on the said property was still existing. Hence, the decision of the CA should be reversed and set aside.

In their Comment on the petition, private respondents Constancio Maglana and Agapito Pacetes averred that the action of the petitioners in the court a quo was barred by the Decision of this Court in G.R. No. L-60690 on November 24, 1989.

THE RULING OF THE COURT

The petition is denied due course.

We note that the petitioners failed to implead all the compulsory heirs of the deceased Concepcion Gil in their complaint. When she died intestate, Concepcion Gil, a spinster, was survived by her sister Nieves, and her nephews and nieces, three of whom are the petitioners herein.

Upon Concepcion's demise, all her rights and interests over her properties, and the rights and obligations under the Deed of Absolute Sale executed in favor of Iluminada Pacetes, were transmitted to her sister, and her nephews and nieces[29] by way of succession, a mode of acquiring the property, rights and obligation of the decedent to the extent of the value of the inheritance of the heirs. The heirs stepped into the shoes of the decedent upon the latter's death.[30]

In their complaint, the petitioners alleged that:

- That upon the death of the late Concepcion Palma Gil, her heirs namely: A. Children of the deceased Pilar

Palma Gil Rodriguez; B. Children of the deceased Asuncion Palma Gil Hizon one of whom is plaintiff Vicente Hizon, Jr.; C. Nieves Palma Gil Villarica; D. David Palma Gil one of whom is plaintiff Angel Palma Gil; E. Perla Palma Gil; and F. Children of the deceased Jose Palma Gil, ipso facto became co-owners of the said subject property by operation of law;[31]

When she testified, petitioner Palma Gil stated that:

ATTY. GALLARDO:

With the Court's permission.

Q

You said that you are one of the 3 plaintiffs in this case?

A

Yes, sir.

Q

Now, aside from these 3 plaintiffs who are supposed to be the heirs of the late Concepcion Palma Gil, there are also other heirs who were not included as plaintiffs in this case?

A

Yes, because that time when they demolished the building and I accompanied Atty. Villarica at the site where they had the demolition, we found out that during the confrontation that we have to hurry and file the case right away. So we were not able to contact all the heirs and I have contacted . . .since 3 of us were there during the demolition, so we decided that I will be one, and Angel Palma Gil was also there and also Vicente Hizon Jr. whom I contacted at the Apo View Hotel and I contacted also Julian Rodriguez, another cousin thru telephone and he told us to go ahead and file the case. We cannot get all the heirs. We cannot gather all of them and we will have a hard time asking them to sign, so we just filed the case.

Q

You are telling the court that the other heirs were not included because they were not available to sign the complaint?

A

They were not there during the demolition.

Q

When was the case filed?

A

June 14, the demolition was on June 14, 1982.

ATTY. QUITAIN:

The best evidence would be the complaint, Your Honor.

ATTY. GALLARDO:

Q

It appears in the complaint that it was filed sometime on June 16, 1982?

A

We had it on June 14 the demolition, and we filed it right away because we were in a hurry.

Q

Since June 16, 1982 up to the present the other heirs did not do anything to be included in the complaint?

ATTY. QUITAIN:

The best evidence would be the motion for intervention and it would seem that compañero is contending that there is a need to include all heirs. Under the civil law on property even one co-owner may file a case.[32]

Although the petitioners sought leave from the trial court to amend their complaint to implead the intestate estate of the deceased Concepcion Gil through her administratrix Perla Palma Gil, as party plaintiff, the trial court denied the petitioners' plea. The petitioners manifested to the trial court that they would assign the denial of their plea as one of the assigned errors in case of appeal to the CA. They failed to do so. The petitioners were duty bound to implead all their cousins as parties-plaintiffs; otherwise, the trial court could not validly grant relief as to the present parties and as to those who were not impleaded.[33]

Being indispensable parties, the absence of the surviving sister, nephews and nieces of the decedent in the complaint as parties-plaintiffs, and in this case, as parties-petitioners, renders all subsequent actions of the trial court null and void for want of authority to act, not only as to the absent parties, but even as to those present. Hence, the petition at bar should be dismissed.[34]

Even if we were to brush aside this procedural lapse and delve into the merits of the case, a denial in due course is inevitable.

Article 1191[35] in tandem with Article 1592[36] of the New Civil Code are central to the issues at bar. Under the last paragraph of Article 1169 of the New Civil Code, in reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay in the other begins. Thus, reciprocal obligations are to be performed simultaneously so that the performance of one is conditioned upon the simultaneous fulfillment of the

other.[37] The right of rescission of a party to an obligation under Article 1191 of the New Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them.[38]

That the deed of absolute sale executed by Concepcion Gil in favor of Iluminada Pacetes is an executory contract and not an executed contract is a settled matter. In a perfected contract of sale of realty, the right to rescind the said contract depends upon the fulfillment or non-fulfillment of the prescribed condition. We ruled that the condition pertains in reality to the compliance by one party of an undertaking the fulfillment of which would give rise to the demandability of the reciprocal obligation pertaining to the other party.[39] The reciprocal obligation envisaged would normally be, in the case of the vendee, the payment by the vendee of the agreed purchase price and in the case of the vendor, the fulfillment of certain express warranties.[40]

In another case, we ruled that the non-payment of the purchase price of property constitutes a very good reason to rescind a sale for it violates the very essence of the contract of sale. In *Central Bank of the Philippines v. Bichara*,[41] we held that the non-payment of the purchase price of property is a resolatory condition for which the remedy is either rescission or specific performance under Article 1191 of the New Civil Code. This is true for reciprocal obligations where the obligation is a resolatory condition of the other.[42] The vendee is entitled to retain the purchase price or a part of the purchase price of realty if the vendor fails to perform any essential obligation of the contract. Such right is premised on the general principles of reciprocal obligations.[43]

In this case, Concepcion Gil sold Lot 59-C-1 to Iluminada Pacetes for P21,600.00 payable as follows:

- The purchase price of P21,600.00 shall be paid as follows: P7,500.00, to be paid upon the signing of this instrument; and the balance of P14,100.00, to be paid upon the delivery of the corresponding Certificate of Title in the name of the VENDEE.

Concepcion Gil obliged herself to transfer title over the property to and under the name of the vendee within 120 days from the execution of the deed.

- That the VENDOR shall, within the period of ONE HUNDRED TWENTY (120) DAYS, from the signing of this agreement, undertake and work for the issuance of the corresponding Certificate of Title of the said Lot No. 59-C-1 in her favor with the proper government office or offices, to the end that the same can be duly transferred in the name of the herein VENDEE, by virtue thereof.
- That pending the full and complete payment of the purchase price to the VENDOR, the VENDEE shall collect and receive any and all rentals and such other income from the land above-described for her own account and benefit, this right of the VENDEE to begin from December 1, 1956.

That it is further stipulated that this contract shall be binding upon the heirs, executors and administrators of the respective parties hereof.

And I, CONCEPCION PALMA GIL, with all the personal circumstances above-stated, hereby confirm all the terms and conditions stipulated in this instrument.[44]

The vendee paid the downpayment of P7,500.00. By the terms of the contract, the obligation of the vendee to pay the balance of the purchase price ensued only upon the issuance of the certificate of title by the Register of Deeds over the property sold to and under the name of the vendee, and the delivery thereof by the vendor Concepcion Gil to the latter. Concepcion failed to secure a certificate of title over the property. When she died intestate on August 4, 1959, her obligation to deliver the said title to the vendee devolved upon her heirs, including the petitioners. The said heirs, including the petitioners failed to do so, despite the lapse of eighteen years since Concepcion's death.

Iluminada was not yet obliged on August 8, 1977 to pay the balance of the purchase price of the property, but as a

sign of good faith, she nevertheless consigned the amount of P11,983.00, part of the balance of the purchase price of P14,000.00, with the court in Civil Case No. 1160. The court accepted the consignment and she was issued receipts therefor. Still, the heirs of Concepcion Gil, including the petitioners, failed to deliver the said title to the vendee. Iluminada was compelled to file, at her expense, a petition with the RTC docketed as Miscellaneous Case No. 4715 for the issuance of an owner's duplicate of TCT No. 7450 covering the property sold which was granted by the court on March 22, 1978. It was only on May 9, 1978 that Iluminada managed to secure TCT No. 61514 over the property under her name. Upon the failure of the heirs to comply with the decedent's prestation, Iluminada Pacetes was impelled to resort to legal means to protect her rights and interests.

The petitioners, as successors-in-interest of the vendor, are not the injured parties entitled to a rescission of the deed of absolute sale. It was Concepcion's heirs, including the petitioners, who were obliged to deliver to the vendee a certificate of title over the property under the latter's name, free from all liens and encumbrances within 120 days from the execution of the deed of absolute sale on October 24, 1956, but had failed to comply with the obligation.

The consignment by the vendee of the purchase price of the property is sufficient to defeat the right of the petitioners to demand for a rescission of the said deed of absolute sale.[45]

It bears stressing that when the vendee consigned part of the purchase price with the Court and secured title over the property in her name, the heirs of Concepcion, including the petitioners, had not yet sent any notarial demand for the rescission of the deed of absolute sale to the vendee, or filed any action for the rescission of the said deed with the appropriate court.

Although the vendee consigned with the Court only the amount of P11,983.00, P2,017.00 short of the purchase price of P14,000.00, it cannot be claimed that Concepcion was an unpaid seller because under the deed of sale, she was still obligated to transfer the property in the name of the vendee, which she failed to do so. According to Article 1167 of the New Civil Code:

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. (1098)

The vendee (Iluminada) had to obtain the owner's duplicate of TCT No. 7450 and thereafter secure its transfer in her name. Pursuant to Article 1167, the expenses incurred by the vendee should be charged against the amount of P2,617.00 due to the heirs of Concepcion Gil as the vendor's successors-in-interest.

In sum, the decision of the CA affirming the decision of the RTC dismissing the complaint of the petitioners is affirmed.

IN LIGHT OF ALL THE FOREGOING, the petition for review is DENIED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Tinga, JJ., concur.
Austria-Martinez, J., no part, concurred in CA decision.

[1] Penned by Associate Justice Bernardo Ll. Salas, with Associate Justices Pedro A. Ramirez and Ma. Alicia Austria-Martinez (now a member of the Court) concurring. Rollo, p. 21.

[2] Ibid., p. 32.

- [3] Folder of Exhibits, p. 397.
- [4] Records, p. 20.
- [5] Id., at 21.
- [6] Folder of Exhibits, Exh. "A-4," p. 2.
- [7] Villarica vs. Gil, 2 SCRA 1147 (1961).
- [8] Ibid.
- [9] Exhibit "A-5-A" to "A-6."
- [10] Exhibit "C-1."
- [11] Villarica v. CA, 57 SCRA 24 (1974).
- [12] Id. at 28.
- [13] Exhibit "A-7," p. 6.
- [14] Exhibit "A-9."
- [15] Exhibit "3."
- [16] Exhibit "C."
- [17] Exhibit "C-2."
- [18] Exhibit "3."
- [19] Exhibit "E."
- [20] Records, p. 9.
- [21] Records, p. 227.
- [22] Jorge v. Hon. Consolacion, 179 SCRA 593 (1989).
- [23] Id. at 264.
- [24] Id. at 262.
- [25] Id. at 266.
- [26] Folder of Exhibits, Exhibit "8," pp. 6-7.
- [27] Rollo, pp. 26-27.
- [28] Annex "A," Rollo, p. 78-80.
- [29] Articles 975, 1003, 1005, 1009, New Civil Code.
- [30] Emmace v. Court of Appeals, 370 SCRA 431 (2001).
- [31] Records, p. 8.
- [32] TSN, 25 May 1990, p. 7-9 (Gil).
- [33] Santana-Cruz v. Court of Appeals, 361 SCRA 520 (2001); Nufable v. Nufable, 309 SCRA 692 (1999).

[34] Metropolitan Waterworks & Sewerage System v. Court of Appeals, 297 SCRA 287 (1998); Zarate, v. RTC of Kalibo, Aklan, Br. 2, 316 SCRA 594 (1999).

[35] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124)

[36] Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term. (1504a)

[37] Integrated Packing Corporation v. Court of Appeals, 333 SCRA 170 (2000).

[38] Romero v. Court of Appeals, 250 SCRA 223 (1995).

[39] Id.

[40] Id.

[41] 328 SCRA 807 (2000).

[42] Id.

[43] Id.

[44] Exhibit "A-3;" Folder of Exhibits for petitioners, p. 2.

[45] Romero v. Court of Appeals, supra.

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